

)	No.: M-07-1827 SI
In Re TFT-LCD (FLAT PANEL))	
ANTITRUST LITIGATION)	MDL NO. 1827
<hr/>)	
)	STIPULATED PROTECTIVE ORDER
This Document Relates to:)	
)	
ALL ACTIONS.)	
)	

Disclosure and discovery activity in this action may involve production of trade secrets or other confidential research, development, or commercial information, within the meaning of Fed.R.Civ.P. 26(c); or other private or competitively sensitive information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to confidential treatment. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal. Civil Local Rule 79-5 sets forth the

1 procedures that must be followed and reflects the standards that will be applied when a party
2 seeks permission from the Court to file material under seal, and is hereby incorporated by
3 reference.

4 **2. DEFINITIONS.**

5 2.1 Party: any party to this action, including all of its officers, directors,
6 and employees.

7 2.2 Disclosure or Discovery Material: all items or information, regardless
8 of the medium or manner generated, stored, or maintained (including, among other things,
9 documents, testimony, transcripts, or tangible things) that are produced or generated in
10 disclosures or responses to discovery in this matter.

11 2.3 Confidential Information or Items: information (regardless of how
12 generated, stored or maintained) or tangible things that qualify for protection under standards
13 developed under Fed.R.Civ.P. 26(c).

14 2.4 Highly Confidential Information or Items: extremely sensitive
15 Confidential Information or Items whose disclosure to another Party or non-party would create
16 a substantial risk of injury that could not be avoided by less restrictive means.

17 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19 2.6 Producing Party: a Party or non-party that produces Disclosure or
20 Discovery Material in this action.

21 2.7. Designating Party: a Party or non-party that designates information or
22 items that it produces in disclosures or in responses to discovery as "Confidential" or "Highly
23 Confidential."

24 2.8 Protected Material: any Disclosure or Discovery Material that is
25 designated as "Confidential" or as "Highly Confidential."

26 2.9. Outside Counsel: attorneys, along with their paralegals, and other
27 support personnel, who are not employees of a Party but who are retained to represent or
28 advise a Party in this action.

1 2.10 In House Legal Personnel: attorneys and other personnel employed by
2 a Party to perform legal functions who are responsible for overseeing this litigation for the
3 Party.

4 2.11 Counsel (without qualifier): Outside Counsel and In House Legal
5 Personnel (as well as their support staffs, including but not limited to attorneys, paralegals,
6 secretaries, law clerks, and investigators).

7 2.12 Expert and/or Consultant: a person with specialized knowledge or
8 experience in a matter pertinent to the litigation, along with his or her employees and support
9 personnel, who has been retained by a Party or its Counsel to serve as an expert witness or as
10 a consultant in this action, and who is not currently an employee, nor has been an employee
11 within four years of the date of entry of this Order, of a Party or of a TFT-LCD business unit
12 of a non-party, and who, at the time of retention, is not anticipated to become an employee of
13 a Party or of a TFT-LCD business unit of a non-party. This definition includes a professional
14 jury or trial consultant retained in connection with this litigation.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
17 organizing, storing, retrieving data in any form or medium; *etc.*) and their employees and
18 subcontractors.

19 **3. SCOPE.**

20 The protections conferred by this Stipulated Protective Order cover not only
21 Protected Material (as defined above), but also any information copied or extracted therefrom,
22 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
23 conversations, or presentations by Parties or Counsel in settings that might reveal Protected
24 Material. However, this Order shall not be construed to cause any Counsel to produce, return,
25 and/or destroy their own attorney work product, or the work product of their co-counsel.

26 **4. DURATION.**

27 The confidentiality obligations imposed by this Order shall remain in effect until
28 the Designating Party agrees otherwise in writing or this Court orders otherwise.

1 **5. DESIGNATING PROTECTED MATERIAL.**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or non-party that designates information or items for protection under this Order
4 must take care to limit any such designation to specific material that qualifies under the
5 appropriate standards and avoid indiscriminate designations.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection at all, or do not qualify for the level of
8 protection initially asserted, that Designating Party must promptly notify all Receiving Parties
9 that it is withdrawing or changing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in
11 this Order (*see, e.g.,* section 5.2(b), below), or as otherwise stipulated or ordered, material
12 that qualifies for protection under this Order must be clearly so designated before the material
13 is disclosed or produced. Notwithstanding the preceding sentence, should a Producing Party
14 discover that it produced material that was not designated as Protected Material or that it
15 produced material that was designated as Protected Material but had designated that Protected
16 Material in the incorrect category of Protected Material, the Producing Party may notify all
17 Parties, in writing, of the error and identifying (by bates number or other individually
18 identifiable information) the affected documents and their new designation or re-designation.
19 Thereafter, the material so designated or re-designated will be treated as Protected Material.
20 Promptly after providing such notice, the Producing Party shall provide re-labeled copies of
21 the material to each Receiving Party reflecting the change in designation. The Receiving Party
22 will replace the incorrectly designated material with the newly designated materials and will
23 destroy the incorrectly designated materials.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (apart from transcripts of
26 depositions or other pretrial or trial proceedings), that the Producing Party affix the
27 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on each page that
28 contains protected material.

1 (b) for testimony given in deposition, that a Party, or a non-party that
2 sponsors, offers, gives, or elicits the testimony, designate any portion of the testimony
3 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” either on the record before
4 the deposition is concluded, or in writing on or before the later of (i) fourteen days after
5 the final transcript is received or (ii) the date by which any review by the witness and
6 corrections to the transcript are to be completed under Fed. R. Civ. P. 30(e). Only
7 those portions of the testimony that are designated for protection in accordance with the
8 preceding sentence shall be covered by the provisions of this Stipulated Protective
9 Order. The entire testimony shall be deemed to have been designated Highly
10 Confidential until the time within which the transcript may be designated has elapsed.
11 If testimony is not designated within the prescribed time period, then such testimony
12 shall not be deemed Confidential or Highly Confidential except as ordered by the
13 Court.

14 Transcript pages containing Protected Material must be separately bound by the
15 court reporter, who must affix to each such page the legend “CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL,” as instructed by the Party or nonparty sponsoring,
17 offering, giving or eliciting the witness’ testimony.

18 (c) for information produced in electronic or video format, and for any
19 other tangible items, that the Producing Party affix in a prominent place on the exterior
20 of the container or containers in which the information or item is stored the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

22 5.3 Inadvertent Failures to Designate. If corrected, an inadvertent failure to
23 designate qualified information or items as “Confidential” or “Highly Confidential” does not,
24 standing alone, waive the Designating Party’s right to secure protection under this Order for
25 such material. If material is re-designated as “Confidential” or “Highly Confidential” after the
26 material was initially produced, the Receiving Party, upon notification of the designation, must
27 make reasonable efforts to assure that the material is treated in accordance with the provisions
28 of this Order.

1 5.4 Increasing the Designation of Information or Items Produced by Other
2 Parties or Non-Parties. Subject to the standards of paragraph 5.1, a Party may increase the
3 designation (*i.e.*, change any Disclosure or Discovery Material produced without a designation
4 to a designation of “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” or designate any
5 Disclosure or Discovery Material produced as “CONFIDENTIAL” to a designation of
6 “HIGHLY CONFIDENTIAL”) of any Discovery Material produced by any other Party or
7 non-Party, provided that said Discovery Material contains the upward Designating Party’s own
8 Confidential or Highly Confidential Information. Any such increase in the designation of a
9 document shall be made within 90 days of the date of its production, unless good cause is
10 shown for a later increase in the designation.

11 Increasing a designation shall be accomplished by providing written notice to all
12 Parties identifying (by bates number or other individually identifiable information) the
13 Disclosure or Discovery Material whose designation is to be increased. Promptly after
14 providing such notice, the upward Designating Party shall provide re-labeled copies of the
15 material to each Receiving Party reflecting the change in designation. The Receiving Party
16 will replace the incorrectly designated material with the newly designated materials and will
17 destroy the incorrectly designated materials. Any Party may object to the increased
18 designation of Disclosure or Discovery Materials pursuant to the procedures set forth in
19 paragraph 6 regarding challenging designations. The upward Designating Party shall bear the
20 burden of establishing the basis for the increased designation.

21 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

22 6.1 Timing of Challenges. A Party does not waive its right to challenge a
23 confidentiality designation by electing not to mount a challenge promptly after the original
24 designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
26 Designating Party’s confidentiality designation must do so in good faith and must begin the
27 process by notifying the Designating Party in writing, by telephone or in person of its challenge
28 and identify the challenged material, then conferring directly in voice to voice dialogue (other

forms of communication are not sufficient) with counsel for the Designating Party. The Parties must then meet and confer in good faith. Each Party must explain the basis for its respective position about the propriety of the challenged confidentiality designations. The parties shall have fourteen (14) days from the initial notification of a challenge to complete this meet and confer process.

6.3 Judicial Intervention. In any judicial proceeding challenging a confidentiality designation, the burden of persuasion with respect to the propriety of the confidentiality designation shall remain upon the Designating Party. If the parties are not able to resolve a dispute about a confidentiality designation within the time provided in paragraph 6.2, above, the parties shall, within fourteen (14) days thereafter, prepare and present to the Special Master a joint letter brief that identifies the challenged material and sets forth the respective positions of the parties about the propriety of the challenged confidentiality designations. Until the ruling on the dispute becomes final pursuant to the provisions of Pre-Trial Order No. 4, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Designating Party's designation.

In the event that the final ruling is that the challenged material is not confidential or that its designation should be changed, the Designating Party shall reproduce copies of all materials with their designations removed or changed in accordance with the ruling within thirty (30) days at the expense of the Designating Party.

7. ACCESS TO AND USE OF PROTECTED MATERIAL.

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by a Producing Party only in connection with this action for prosecuting, defending, or attempting to settle this action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized

under this Order. For purposes of this Order, a secure website, or other internet-based document depository with adequate security, shall be deemed a secure location.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) current or former officers, directors, and employees of Parties to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement To Be Bound by Protective Order" (Exhibit A);

(c) Experts and/or Consultants with respect to each of whom (1) disclosure is reasonably necessary for this litigation, and (2) an "Agreement To Be Bound by Protective Order" (Exhibit A) has been signed;

(d) the Court and its personnel;

(e) stenographers, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement To Be Bound by Protective Order" (Exhibit A);

(f) the author, addressees, or recipients of the document, or any other natural person who would have likely reviewed such document during his or her employment as a result of the substantive nature of his or her employment position, or who is specifically identified in the document, or whose conduct is purported to be specifically identified in the document;

(g) witnesses in the action to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement To Be Bound by Protective Order" (Exhibit A); provided that, Confidential Information may be disclosed to a witness during their deposition, but only if they have executed the "Agreement to Be Bound by Protective Order" (Exhibit A), which shall be made an exhibit to the deposition

1 transcript, or have agreed on the record to keep the information confidential and not to
2 use it for any purpose, or have been ordered to do so; and provided further that, pages
3 of transcribed deposition testimony or exhibits to depositions that reveal Confidential
4 Information must be marked "Confidential" and separately bound by the court reporter
5 and not included in the main deposition transcript and exhibit binder, and may not be
6 disclosed to anyone except as permitted under this Stipulated Protective Order; and

7 (h) any other person to whom the Designating Party agrees in writing or on
8 the record, and any other person to whom the Court compels access to the Confidential
9 Information.

10 7.3 Disclosure of "HIGHLY CONFIDENTIAL" Information or Items.

11 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a
12 Receiving Party may disclose any information or item designated "HIGHLY
13 CONFIDENTIAL" only to:

14 (a) the Receiving Party's Outside Counsel of record in this action, as well as
15 employees of said counsel to whom it is reasonably necessary to disclose the
16 information for this litigation;

17 (b) Experts and/or Consultants with respect to each of whom (1) disclosure
18 is reasonably necessary for this litigation, and (2) an "Agreement To Be Bound by
19 Protective Order" (Exhibit A) has been signed;

20 (c) the Court and its personnel;

21 (d) stenographers, their staffs, and professional vendors to whom disclosure
22 is reasonably necessary for this litigation and who have signed the "Agreement to Be
23 Bound by Protective Order" (Exhibit A);

24 (e) the author, addressees or recipients of the document, or any other
25 natural person who would have likely reviewed such document during his or her
26 employment as a result of the substantive nature of his or her employment position, or
27 who is specifically identified in the document, or whose conduct is purported to be
28 specifically identified in the document;

1 (f) deposition witnesses but only during their depositions and only if they
2 have executed the "Agreement to Be Bound by Protective Order" (Exhibit A), which
3 shall be made an exhibit to the deposition transcript, or have agreed on the record to
4 keep the information confidential and not to use it for any purpose, or have been
5 ordered to do so; and in addition, if the witness is an employee of a Party or is a former
6 employee of a Party, then In House Legal Personnel of the Party in attendance at the
7 deposition of such a witness, may also be present during that portion of the deposition
8 but only if the In House Legal Personnel has signed the "Agreement to Be Bound by
9 Protective Order" (Exhibit A); provided that, pages of transcribed deposition testimony
10 or exhibits to depositions that reveal Highly Confidential Information must be marked
11 "Highly Confidential" and separately bound by the court reporter and not included in
12 the main deposition transcript and exhibit binder, and may not be disclosed to anyone
13 except as permitted under this Stipulated Protective Order; and provided, further that,
14 the parties will meet and confer if the Designating Party believes a particular document
15 requires different treatment for use at deposition; and

16 (g) any other person to whom the Designating Party agrees in writing or on
17 the record, and any other person to whom the Court compels access to the Highly
18 Confidential Information.

19 7.4 Retention of Exhibit A. Outside Counsel for the Party that obtains the
20 signed "Agreements To Be Bound by Protective Order" (Exhibit A), as required above, shall
21 retain them for one year following the final termination of this action, including any appeals,
22 and shall make them available to other Parties upon good cause shown.

23 7.5 Retention of Protected Material. Persons who have been shown
24 Protected Material pursuant to Section 7.2(b), (f), or (g), or Section 7.3(e) or (f) shall not
25 retain copies of such Protected Material.
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**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION.**

If a Receiving Party is served with a discovery request, subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if possible), along with a copy of the discovery request, subpoena or order, as soon as reasonably practicable.

The Receiving Party also must immediately inform the party who caused the discovery request, subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the party in the other action that caused the discovery request, subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Stipulated Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interest in the court from which the discovery request, subpoena or order is issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential or highly confidential material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED
MATERIAL.**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement To Be Bound" that is attached hereto as Exhibit A.

1 **10. FILING PROTECTED MATERIAL.**

2 Without written permission from the Designating Party or a court order secured
3 after appropriate notice to all interested persons, a Party may not file in the public record in this
4 action any Protected Material. A Party that seeks to file under seal any Protected Material
5 must comply with Civil Local Rule 79-5.

6 **11. FINAL DISPOSITION.**

7 Unless otherwise ordered or agreed in writing by the Producing Party, within
8 thirty days after the final termination of this action, including any appeals, each Receiving
9 Party must return all Protected Material to the Producing Party. As used in this subdivision,
10 “Protected Material” includes all copies, abstracts, compilations, summaries or any other form
11 of reproducing or capturing any of the Protected Material. The Receiving Party may destroy
12 some or all of the Protected Material instead of returning it. Whether the Protected Material
13 is returned or destroyed, the Receiving Party must submit a written certification to the
14 Producing Party (and, if not the same person or entity, to the Designating Party) by the thirty
15 day deadline that identifies (by category, where appropriate) all the Protected Material that was
16 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
17 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
18 Protected Material. Notwithstanding this provision, counsel are entitled to retain an archival
19 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
20 attorney work product, even if such materials contain Protected Material. Any such archival
21 copies that contain or constitute Protected Material remain subject to this Protective Order as
22 set forth in Section 4 (DURATION), above.

23 **12. INADVERTENTLY PRODUCED DOCUMENTS.**

24 If a Party at any time notifies any other Party that it inadvertently produced
25 documents, testimony, information, and/or things that are protected from disclosure under the
26 attorney-client privilege, work product doctrine, and/or any other applicable privilege or
27 immunity from disclosure, or the Receiving Party discovers such inadvertent production, the
28 inadvertent production shall not be deemed a waiver of the applicable privilege or protection.

1 The Receiving Party shall immediately return all copies of such documents, testimony,
2 information and/or things to the inadvertently producing Party and shall not use such items for
3 any purpose until further order of the Court. In all events, such return must occur within three
4 (3) business days of receipt of notice or discovery of the inadvertent production. The return of
5 any discovery item to the inadvertently producing Party shall not in any way preclude the
6 Receiving Party from moving the Court for a ruling that the document or thing was never
7 privileged.

8 **13. ATTORNEY RENDERING ADVICE**

9 Nothing in this Protective Order will bar or otherwise restrict an attorney from
10 rendering advice to his or her client with respect to this matter or from relying upon or
11 generally referring to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" Disclosure or
12 Discovery Material in rendering such advice; provided however, that in rendering such advice
13 or in otherwise communicating with his or her client, the attorney shall not reveal or disclose
14 the specific content thereof if such disclosure is not otherwise permitted under this Protective
15 Order.

16 **14. DISPOSITIVE MOTION HEARINGS AND TRIAL**

17 The terms of this Protective Order shall govern in all circumstances except for
18 presentations of evidence and argument at hearings on dispositive motions and at trial. The
19 parties shall meet and confer in advance of such proceedings and seek the guidance of the Court
20 as to appropriate procedures to govern such proceedings.

21 **15. MISCELLANEOUS.**

22 15.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 15.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to disclosing or
26 producing any information or item on any ground not addressed in this Stipulated Protective
27 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any
28 of the material covered by this Protective Order.

1 IT IS SO STIPULATED.

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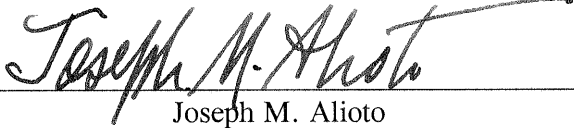
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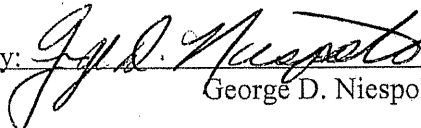
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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

Susan Illston

Hon. Susan Illston
United States District Judge

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DATED: _____

Hon. Susan Illston
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of
_____ [print or type full address],

declare under penalty of perjury under the laws of the United States of America that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California, San Francisco Division, in the case of In Re TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION, No.: M-07-1827 SI, MDL No. 1827.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State (or Country) where sworn and signed: _____

Printed name: _____

Signature: _____